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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,674	08/14/2000	Michael John	11059	8215

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Staten Island, NY 10304

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/637,674

Applicant(s)

JOHN ET AL.

Examiner

Yvonne M. Horton

Art Unit

3635

ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,315,796 to GRUHLKE in view of US Patent #5,568,909 to TIMKO and either US Patent #6,543,391 to LESKO or US Patent #4,386,762 to COLLINS. Regarding claim 1 and 2, GRUHLKE discloses the use of a generally rectangular, plastic, (column 1, line 37) post protective collar member (17), see Figure 2 (two long sides and two short sides), including a closed end (17b), an open end (OE), and four side walls (17a) dimensioned to fit a post (10). GRUHLKE discloses the basic claimed protector except for the four side walls each having fastener holes and except for the use of weep holes in the bottom wall. TIMKO discloses the use of fastener holes (30) in two of the four side walls. Although TIMKO only teaches the use of two fastener holes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure thereof with two additional holes such that each side wall has a fastener hole disposed therein in order to more securely attach the protective member to the post. TIMKO further teaches the use of weep holes (28), and both LESKO and COLLINS teach the use of weep holes (23) and (16), respectively, formed in a lower portion of the members (15) and (10). Although the weep holes of either TIMKO, LESKO and COLLINS are not disposed in the bottom wall of the members centrally or at the four corners, they are both used to prevent water from collecting and to drain

Art Unit: 3635

water from the members. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bottom wall of protective member of GRUHLKE with the weep holes of either TIMKO, LESKO or COLLINS centrally thereof and in each of the four corners, since the mere arrangement of essential parts of an invention involves only routine skill in the art. Electing the position of the weep hole is governed by which area would provide the optimal run off of fluid from the member. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the protective member of GRUHLKE with the fastener holes of TIMKO and the weep holes of either TIMKO, LESKO or COLLINS in order to securely fasten the protective member to the support post and to allow any water or moisture to properly drain from between the post and the protective member thereby decreasing the chance of the member deteriorating from over exposure to external influences. In reference to claim 3, as stated earlier, the protective collar (17) of GRUHLKE is rectangular. Regarding claim 4, although the protective member of GRUHLKE is rectangular, the applicant has shown no criticality over a rectangular shaped protective member as opposed to a circular member. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a circular shaped collar suitable for the use intended as an obvious matter of design choice. Obviously, a circular collar would perform well with a circular post whereas a rectangular or square collar would perform best for a square post.

Response to Arguments

Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the applicant's argument that GRUHLKE does not teach the use of holes, the examiner agrees. However, the modification of GRUHLKE with any of the aforementioned references is to teach that prior art devices such as GRUHLKE require a means to protect while also preventing the wood member from rotting. The rejections have been modified with TIMKO, LESKO and COLLINS to show the necessity for such weep holes in members similar to GRUHLKE.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


YMH
April 13, 2004